IN THE HIGH COURT OF BOMBAY AT GOA

CRMINAL MISC. APPLICATIONS NO. 140 AND 141 OF 2004.

CRIMINAL MISC. APPLICATION NO. 140/2004.

Mr. Vassudev A. Naik,
resident of Ponda, Goa. ... Applicant

Versus

State,
through C.B.I.,
Altinho, Panaji, Goa. ... Respondent.

CRIMINAL MISC. APPLICATION NO. 141/2004.

Mr. Alex Piedade Sales,
resident of Vasco-da-Gama,
Goa. ... Applicant.

VERSUS

State,
Through C.B.I.,
Altinho, Panaji, Goa. ... Respondent.

Shri S.G. Bhobe with Ms. M.H. Fernandes,
Advocates for the Applicants.

Shri S.R. Rivonkar, Special Public Prosecutor
for the Respondent.

CORAM: N.A. BRITTO, J.

DATE: 22ND JUNE, 2004.

O R D E R:

The applicants herein have approached this court for anticipatory bail, their applications for the grant of the same, having been rejected by the learned Sessions Judge, Margao, by his common Order dated 16.6.04.

2. The ninth consignment of ladies nightwear with FOB value of about Rs.1.15 crores manufactured by K.D. Mundra, Proprietor of M/s. Welspin & Branded Impex and put into 120 packages and sought to be exported by Vijay Kumar Poddar of Globle Fashion (Exim) India through a circuitous route from Sancoale Industrial Estate, Zuarinagar, Vasco-d-Gama, Goa where both the said establishments were situated, via ICD, Hyderabad and Nhava Sheva Port near Mumbai to Dubai and stuffed and sealed in container no. FSCU-326331-3 after the same was checked and examined by applicant Shri V.A. Naik under the supervision of applicant A.P. Sales, Inspector and Superintendent of Customs and Central Excise respectively, sailed into rough weather, when the said consignment, because of circuitous route it had taken, raised suspicion and was examined by the Customs Officers of the Special Investigation and Intelligence Branch at Hyderabad on 27.3.2004 when it was found that except for 4 packages the remaining packages contained rags or cloth pieces not fit to be worn and of no commercial value and as a fall-out of the said inspection of the said consignment by the said officers of Customs, Special Investigation and Intelligence

Branch at Hyderabad the said K.D. Mundra came to be detained under Cofeposa Act on 7.4.2004 and the applicants herein towards the end of May this year came to be transferred from Vasco range to headquarters of Customs and Central Excise at Panaji, Goa.

3. The CBI on 1.6.2004 based on information through reliable source registered an F.I.R. being RC No.4(A)/2004/CBI/GOA against the applicants herein, the said V.K. Poddar and others under section 120-B r/w Sec.420 I.P.C. and Sec. 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and on 2.6.2004 conducted search of the premises of the applicants and during the search of the new office premises of applicant Shri A.P. Sales at Panaji, copies of ARE-2 Form, Invoices and other documents in respect of the said consignment were recovered from the table drawer of the said Shri A.P. Sales. On 4.6.2004 the applicants herein stating that they had learnt through the Navhind Times dated 4.6.2004 that the CBI had registered a case against them, approached the Sessions Court at Margao with their applications for anticipatory bail which came to be dismissed by Order dated 16.6.2004 and thereafter although

the CBI tried to summon the applicants for investigation the applicants made themselves scarce by remaining absent on Casual Leave from their office.

4. The allegation against the applicants is that they being Inspector and Superintendent of Central Excise, Vasco-da-Gama range, and as such being public servants, entered into a criminal conspiracy with the said V.K. Poddar and pursuant to the said conspiracy abused their official positions with corrupt and illegal means and dishonestly and fraudulently certified the said consignment of M/s Globle Fashion (Exim) India as containing ladies nightwear for claiming export incentive of Rs. 13 lakhs under the Duty Entitlement Pass Book Scheme (DEPB) despite the fact that the said consignment was containing rags and junk clothes of no commercial value and thereby cheated the Customs Department and caused undue pecuniary advantage to themselves.

5. On the other hand, it is the case of the applicants that they have learnt that the rebate claims filed by the exporter are still pending clearance with the Central Excise Department and

that the said exporter would be benefited only after submitting the necessary proof of export of goods and therefore no rebate could have been availed of in the present case. The applicants have further stated that similar eight consignments regarding ladies nightwear were exported under their supervision and there were no untoward experience or allegations of the present nature in relation to the said eight consignments. The applicant stated that they had taken four packages at random which were examined and verified by applicant Shri Naik under the supervision of applicant Shri Sales and upon verification it was found that it was in conformity with ARE-2 (application for removal of export) and the samples of the same were retained in the office and two representative samples were handed over to the exporter.

6. The learned Sessions Judge came to the conclusion that prima facie the record revealed the involvement of the applicants in the said crime and since the offences were committed in pre-planned manner and the investigation was at a preliminary stage, this was not a fit case to grant anticipatory bail as custodial

interrogation of the applicants was required by the CBI.

At the time of hearing of the applications, some provisions contained in Central Excise Manual have been referred to on behalf of both the parties. They read as follows :-

" 5. Duty of Central Excise Officers at the place of dispatch:

5.1 The Superintendent will randomly select the consignment for examination of goods and depute the sector officer for the purpose. Normally, not more than 10% of the total consignments of a manufacturer-exporter in a month should be examined in such manner. The Dy./Asstt. Commissioner will periodically check that the aforesaid frequency is maintained.

5.2 In case any major discrepancies relating to the description, quantity and/or value of export goods are noticed during examination, this frequency can be raised by the Asstt. Commissioner after recording the reasons in writing, apart from other necessary action as

per law. The Commissioner should also be informed about such cases. Normal frequency may be restored once the exporter undertakes to abide by the procedures and to give correct declaration.

5.3 As far as possible, in case of containerised cargo, it should be ensured that the consignment should be examined prior to stuffing in the container. In such cases, the Central Excise Officer will supervise the stuffing and the sealing. The exporter will endorse the requisite certificate in the manner specified at Para 6.3 of this Trade Notice.

5.4 Where the consignment is selected for examination, the officers will carry out the percentage examinations and/or weighment of packages to ascertain correctness of the particulars mentioned in the ARE-1/ARE-2, i.e. 5% of the packages in the consignment, subject to a minimum of one package should be examined. In case of any discrepancy noticed during such examination, this percentage can be raised and recorded. .....

6.4 The Dy./Asstt. Commissioner may

order for surprise checks to verify whether a manufacturer-exporter is complying with the aforesaid procedure. "

7. Shri S.G. Bhobe, the learned counsel of the applicants, has submitted that the applicants were not required to inspect all the packages and that in fact they inspected four of the packages which they found in order. Regarding the finding of ARE-2 Forms, invoices, etc. in the table drawer of applicant Shri Sales, learned Advocate Shri Bhobe submitted that applicant Shri Sales had obtained copies of the said documents since he was aware that charges were being made against him and wanted to have necessary material to reply to the said charges. Shri Bhobe submits that taking the applicants into custody will be of no help to the CBI to investigate the case further and in case they are taken into custody, it will result in irreversible and incalculable damage to the reputation of the applicants.

8. Shri Rivonkar, learned counsel of the C.B.I., on the other hand, has submitted that unless the applicants are interrogated in custody it will not be possible to investigate

the case in all its dimensions since this case has ramifications in Goa, Hyderbad, Bangalore, Surat, Nhava Sheva, etc. and since the persons involved have committed the offences in a pre-planned manner a detailed custodial interrogation is required to reveal the deep rooted organized racket. Shri Rivonkar further submitted that on the so called export, the exporter was entitled to claim 15% rebate on export duty, the manufacturer was entitled to 15% rebate on manufacturing inputs besides the exporter was entitled to 100% exemption from excise duty.

9. Shri Rivonkar has placed reliance on the cases reported in **Aniruddhakumar Dhote v. State of Maharashtra** (2002 (3) Bom. C.R. 324), **Rohit Bhagchand Karnavat & Anr. v. State of Maharashtra** (2002 All MR (Cri) 1699) and on an unreported judgment of this Court in Criminal Miscellaneous Application No.117/2003 dated 5.6.2003 in the case of Pedro Ferrao @ Peter Ferrao v. State. I do not think the said cases have any relevance to the case at hand. Shri Rivonkar has also referred to the case of **State of A.P. v. Bimal Krishna Kundu and another** (1997) 8 S.C.C., 104 wherein the Hon'ble Supreme

Court referring to the case of **Pokar Ram v. State of Rajasthan** (1985) 2 SCC 597 has come to the conclusion that the considerations which should weigh with the Court while dealing with the request for anticipatory bail need not be the same as for an application to release on bail after arrest. In fact, the Hon'ble Supreme Court was dealing with a case of leakage of question papers for examination conducted by the PSC and the Hon'ble Supreme Court held that it was quite disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, were not taken into account by the learned Single Judge. The Supreme Court further observed that they had no doubt that if the respondents were equipped with such an order before they are interrogated by the police, it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy and public interest would suffer as a consequence.

10. The Supreme Court in the case of

Balchand Jain v. State of Madhya Pradesh (A.I.R. 1977 S.C., 366) observed that Section 438 of Cr.P.C. is an extraordinary remedy and should be resorted to only in special cases and that the said provision was enacted to see that the liberty of the subject is not put in jeopardy on frivolous grounds at the instance of unscrupulous or irresponsible persons or officers who may some times be in charge of prosecution.

11. In the case at hand the Customs Department having known of the involvement of the applicants in the said conspiracy chose to transfer the applicants from Vasco range to the Customs headquarters at Panaji. This has not been denied on behalf of the applicants. The learned Sessions Judge who initially dealt with the applications for anticipatory bail found that the presence of the applicants in custody would be required to complete the investigation which was at a preliminary stage. It is not the case of the applicants herein that they have been wrongly or falsely involved in the cases registered against them. If that was the case it would have been a different matter. The contention of the applicants that they did check

the four packages and found them in order appears to be too good to be true because only four packages were found to be in order by the Customs and Central Excise at ICD, Hyderabad. The applicants do not appear to have faithfully carried out their duties as provided by the Central Excise Manual. One one does not at all know whether the previous consignments were in fact in order or were manipulated consignments as the present one. This could be found out only after the investigations are completed. The allegations in the F.I.R. prima facie create strong suspicion against the applicants of their involvement in cheating the Department and claiming the rebates which an exporter or manufacturer is entitled to by virtue of the existing provisions made in the Customs regulations. It is difficult to accept at this stage that the container could be stuffed and sealed mostly with rags without the connivance of the applicants. The Hon'ble Supreme Court in the case of **State Rep. by the C.B.I. v. Anil Sharma** (1997 S.C.C. **(Cri) 1039) has stated that** custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In my opinion,

it is only custodial interrogation of the applicants herein and some of the main accused involved in this case which will enable the C.B.I. to investigate and find out the complicity and the size of customs officers and others involved in the racket of exporting rags as ladies nightwear in order to cheat the Customs Department by claiming rebates.

12. The observations of the Hon'ble Supreme Court in the case of **Enforcement Officer, Ted, Bombay v. Bher Chand Tikaji Bora & Anr.**[2000 **(1)** Crimes 33 (SC] stare at my face because the said observations are squarely applicable to persons like the applicants. The Supreme Court in this case has observed that the white-collar criminal like the respondent against whom the allegation is that he has violated the provisions of the Foreign Exchange Regulation Act is a menace to the society and therefore unless he alleges and establishes in the materials that he is being unnecessarily harassed by the investigating agency, the Court would not be justified in invoking jurisdiction under Section 438 Cr.P.C. and granting anticipatory bail. The Hon'ble Supreme Court also observed that because the respondent was

available for interrogation and the prosecution did not avail of that opportunity, there should not be any justification for non-granting the anticipatory bail sought for and therefore the High Court was wholly unjustified in invoking jurisdiction under S.438 and granting anticipatory bail to the respondent. The fact that the applicants herein have otherwise an unblemished record of service and are otherwise family men with wife and children cannot out weigh public interest namely to investigate the case in all its details and bring the real culprits to book. In other words when individual or private interests are pitted against public interest, it is the latter which should prevail.

13. I am therefore of the view that this is not a fit case for this Court to exercise its discretion under section 438 Cr.P.C. and arm the applicants with pre-arrest bail order which is bound to a great extent to stifle further investigations.

14. Before parting, a note is required to be made of two somewhat disturbing features of this case which can affect the course of

investigations. The First. The F.I.R. was registered by the CBI on 1.6.2004. The applicants have claimed that they read a report published on the "Navhind Times" dated 4.6.2004. One does not know why the CBI immediately after lodging the FIR chose to go to the Press. Was it to enable the applicants to approach the Court and obtain pre-arrest bail order ?

15. The second. The bail applications were filed before the Sessions Court on 4.6.2004 and they have been disposed off on only on 16.6.2004. This Court in the case of **Shri Khemlo Sakharam Sawant v. State** (2001 (2) Goa L.T. 111) had deprecated the practice of delay in disposing off bail applications. It is hoped that these lapses will not be repeated in future.

Applications dismissed.

N. A. BRITTO, J.

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